S.B.CIVIL WRIT PETITION NO.1404/2005.
(MOOL CHAND BANSAL V. THE STATE OF RAJASTHAN & ors)

DATE OF ORDER: : 1.4.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.M.R.Singhvi, for Petitioner.
Mr.Sangeet Lodha, for Respondents.

The instant petition has been filed with the prayers that by an appropriate writ, order or direction, Respondent No.2 – the Rajasthan High Court may be directed to place on record the letter dated 5.6.2004. It is further prayed that the impugned order dated 14.2.2005, passed by Respondent No.3 – the District & Sessions Judge, Churu may be quashed and set aside. It is also prayed that Respondent No.3 may be directed to hold the examination in terms of the Rajasthan High Court's communication dated 5.6.2004 and the petitioner may be given reasonable opportunity to appear in the examination and looking to the long period of his service, he may be regularised.

Brief facts giving rise to the instant petition are that the petitioner has passed the Higher Secondary Examination in the year, 1985 from the Board of Secondary Education, Rajasthan, Ajmer. The petitioner also possesses the qualification of typing. Thus, in view of his educational qualification, he was fully eligible for being appointed as Lower Division Clerk in accordance with the Rajasthan Subordinate Courts Ministerial Establishment

Rules, 1986 (hereinafter referred to as 'the Rules, 1986').

As the petitioner was eligible, he applied for appointment and vide office order dated 18.1.1992, he was given temporary appointment by Respondent No.3.

While the petitioner was working on the post of Lower Division Clerk, Respondent No.1 passed an order dated 6.3.1992 (Annexure 2) and placed the services of the petitioner at the disposal of the Additional Public Prosecutor No.5, Jaipur city, Jaipur. Thereafter, vide order dated 29.8.1996, his services were placed at the disposal of the Additional Sessions Judge, Ratangarh. The said order was challenged by the petitioner by way of filing an appeal before the Rajasthan Civil Services Appellate Tribunal, Jaipur. The appeal was allowed by the Tribunal vide judgment dated 22.3.1999 and the order dated 29.8.1996 was set aside and the respondents No.1 and 2 were directed that upon reporting for duty, the petitioner may be taken on duty and appropriate order for his posting may be passed.

The judgment of the Tribunal dated 22.3.1999 was challenged by way of filing a writ petition in the Rajasthan High Court, Jaipur Bench, Jaipur. The writ petition was allowed and the judgment dated 22.3.1999 passed by the Tribunal was set aside and the District & Sessions Judge, Churu was directed to take the petitioner on duty on the post on which he was appointed on the terms and conditions incorporated in the

appointment order initially issued.

In this way, the petitioner reported for duty to the District & Sessions Judge, Churu, who, in turn posted the petitioner in the Court of the Additional Civil Judge (Junior Division) and Judicial Magistrate No.2, Sujangarh, where the petitioner joined his duties.

The petitioner was called upon to appear in the examination in accordance with the Rules, 1986, for regular appointment on the post of Lower Division Clerk. The petitioner appeared in the said examination, but, unfortunately, he could not qualify the same. But he was allowed to continue.

On 24.9.2002, the petitioner made an application before the District & Sessions Judge, Churu and requested him to give one more chance to the petitioner to qualify the examination. Simultaneously, the petitioner requested the District & Sessions Judge, Churu through representation that keeping in view the fact that he is in service since 1992 and he has rendered best possible services and he has spent more than 10 years, therefore, his services may be regularized. The aforesaid representation of the petitioner was forwarded by the District & Sessions Judge, Churu to the Registrar General, Rajasthan High Court, vide his letter dated 8.10.2002.

The representation of the petitioner was examined by the Rajasthan High Court and looking to his past ten years of service, and looking to the fact that he is still in service, it was

thought proper to give him one more chance to qualify the examination and, accordingly, the Rajasthan High Court issued letter No.G/I/A-4/I/A/51/88/II/1205 dated 5.6.2004.

The said communication was received by the respondent No.3, but, unfortunately, the petitioner was never called upon to appear in the departmental examination in reference to the opportunity granted by the Rajasthan High Court vide its letter dated 5.6.2004. In fact, the petitioner was waiting that he will get an opportunity to appear in the examination, but, unfortunately, he did not get any opportunity to appear in the examination in terms of the communication of the Rajasthan High Court dated 5.6.2004.

The petitioner was surprised and shocked when he was given a copy of the order dated 14.2.2005 (Annexure 7), passed by the District & Sessions Judge, Churu, proposing to terminate his services w.e.f. 31.3.2005. As a matter of fact, from this order only, the petitioner came to know that the Rajasthan High Court has ordered to provide an opportunity to him to appear in the examination. But, unfortunately, no opportunity was ever afforded to him, nor any intimation in this regard was given to the petitioner to appear in the examination.

On 17.2.2005, the petitioner submitted a representation to the District & Sessions Judge, Churu and requested that he may be made available a copy of the letter dated 5.6.2004 sent by the High Court to the District & Sessions Judge, Churu. But,

unfortunately, no copy of the letter dated 5.6.2004 was made available to the petitioner.

Thus, no opportunity to appear in the examination in terms of the communication of the High Court dated 5.6.2004 was given to the petitioner, which resulted into denial of protection of Articles 14 and 16 of the Constitution of India.

After 5.6.2004, no advertisement was issued inviting applications from the General Caste candidates, nor he received any intimation enabling him to appear in the examination. Therefore, according to the learned counsel, no chance was given to the petitioner in terms of the Rajasthan High Court's letter dated 5.6.2004.

It is submitted by the learned counsel for the respondents that vide order dated 18.1.1992, the petitioner was appointed on urgent/temporary/ad hoc basis for a period of three months under the provisions of Rule 23 (3) of the Rules, 1986.

It is further submitted that on 28.7.2002, a competitive examination was conducted for recruitment on the post of LDC, wherein the petitioner was permitted to appear, but he could not qualify the examination and was declared failed.

It is also submitted that on 24.9.2002, the petitioner made an application that he may be given one more opportunity to qualify the departmental examination. The application submitted by the petitioner was forwarded by the District Judge, Churu vide letter No.2731 dated 8.10.2002, stating therein that Shri

Mool Chand Bansal was appointed under Rule 23 (3) of the Rules, 1986 and after re-posting him in the Judgeship, he failed in the competitive examination conducted for the recruitment on the post of LDC.

It is contended by the learned counsel for the respondents that the High Court vide communication No.1205 dated 5.6.2004, directed that the petitioner may be given one more opportunity to qualify the departmental examination and on qualifying the same, his services may be regularized from the date of qualifying the examination. So, under the directions of the High Court, a departmental examination for recruitment on the post of LDC was conducted by the respondent No.3 on 6.2.2005. The petitioner obtained an application for for appearing in the examination being No.44 through the reader Shri Prakash Kumar Sinha posted in the Court of the Additional Civil Judge (Junior (Division) and Judicial Magistrate No.2, Sujangarh, where the petitioner is also posted. The petitioner did not submit the duly filled in form, because he was not willing to appear in the competitive examination conducted by the respondent No.3. According to the learned counsel for the respondents, the petitioner was knowing fully well that he was required to appear in the examination conducted by the respondent No.3 for the recruitment on the post of LDC on 6.2.2005 and, only for this reason, he obtained the application form through the reader posted in the Court of the Additional

Civil Judge (Junior Division) and Judicial Magistrate No.2, Sujangarh.

The advertisement inviting applications from eligible candidates for recruitment on the post of LDC was published in the Newspaper "Dainik Lok Doot", Churu. The advertisement was sent to all the courts functioning in the Churu Judgeship for affixing the same on the notice board for the information of the persons concerned desiring to appear in the competitive examination for the recruitment on the post of LDC.. The petitioner has obtained the application form for appearing in the examination through the reader of the Court of the Additional Civil Judge (Junior Division) and Judicial Magistrate No.2, Sujangarh. A photostat copy of the relevant portion of the register showing details of the form issued in the name of the petitioner obtained by Shri Prakash Kumar Sinha bearing his signature is produced as Annexure-R/3 by the respondents. Shri Prakash Kumar Sinha has also filed an affidavit in this regard.

It is submitted that respondent No.3 has issued order dated 14.2.2005, whereby it has been ordered that the petitioner's services shall stand terminated with effect from 31.3.2005. Since the petitioner deliberately did not avail of the opportunity to appear in the examination conducted by the respondent No.3, therefore, the order terminating his services with effect from 31.3.2005 has rightly been passed.

Thus, according to the learned counsel for the

respondents, the petitioner was conscious of the fact that an advertisement has been issued inviting applications for recruitment on the post of LDC. In the advertisement itself, it has been mentioned that if the candidates belonging to the SC/ST are not available, then the post shall be filled in from the candidates belonging to the general category. Moreover, the petitioner was required to appear and qualify the examination, therefore, it does not matter that advertisement is issued for the recruitment of the SC/ST or general candidates.

As a matter of fact, the petitioner deliberately did not appear in the examination and since now his services are sought to be terminated by the impugned order with effect from 31st March, 2005, therefore, he is taking the plea that no advertisement has been issued inviting applications for general candidates.

Learned counsel for the petitioner has also filed a counter-affidavit of Shri Mool Chand Bansal to the effect that in compliance with the communication dated 5.6.2004 of the Rajasthan High Court, no opportunity, in fact, was given to the petitioner to appear in the departmental examination. The petitioner also denied in the counter-affidavit that Shri Prakash Kumar Sinha never made available to him any form on 22.12.2004, nor he desired any form through him (Prakash Kumar Sinha). Apart from that, according to the learned counel for the petitioner, sofar as Notification dated 15.12.2004 is

concerned, it was essentially earmarked for SC/ST candidates.

Heard learned counsel for the parties.

Be that as it may, it is an admitted position that the communication of the High Court dated 5.6.2004 was not given to the petitioner by the District & Sessions Judge, Churu, in order to enable him to appear in the competitive examination. The competitive examination took place on 6.2.2005. The communication of the High Court dated 5.6.2004 was given to the petitioner on 10.3.2005, when the examinations were over. The petitioner was taken by great surprise when he received a copy of the order dated 14.2.2005 (Annexure 7), passed by the District & Sessions Judge, Churu, proposing to terminate his services w.e.f. 31.3.2005. Prior to this order, no notice directing him to appear to the examination was given to him by the District & Sessions Judge, Churu, nor the principles of natural justice were followed. In response to the order dated 14.2.2005 (Annexure 7), the petitioner submitted an application dated 17.2.2005 (Annexure 8), requesting the District & Sessions Judge, Churu to provide him a copy of the letter No.G (1)/A4 (1) (A) 51/88 (II) 1205 dated 5.6.2004 issued by the High Court giving him one more opportunity to appear in the departmental examination. Then, on 10.3.2005, the petitioner was supplied a copy of the letter dated 5.6.2004 of the High Court, after he filed a writ petition in the High Court on 9.3.2005. It may be mentioned that even if it is assumed that the petitioner did not

appear in the competitive examination on 6.2.2005 deliberately, though he procured the examination form through one Shri Prakash Kumar Sinha, Reader of the Court of Additional Civil Judge (Junior Division) and Judicial Magistrate No.2, Sujangarh, yet there appears to be no fault on his part, as the District & Sessions Judge, Churu has not given him the communication dated 5.6.2004 of the Rajasthan High Court till 9.3.2005. How he could have appeared in the examination, without receiving the communication dated 5.6.2004 of the High Court through District & Sessions Judge, Churu, permitting him to appear in the said examination. The communication of the High Court granting him one more opportunity to appear in the departmental examination was given to him on 10.3.2005. The competitive examination had taken place on 6.2.2005. Thus, as a rule of prudence, how the petitioner will appear in the Examination on 6.2.2005, because neither the petitioner was informed by the District & Sessions Judge, Churu to appear in the said Examination, nor any communication with regard to the letter of the High Court dated 5.6.2004 was given to him uptil 6.2.2005. Even prior to issuing the order Annexure 7, no opportunity of hearing was given to the petitioner by the District & Sessions Judge, Churu.

Taking into consideration an over-all view of the matter coupled with the peculiar facts and circumstances of the case and looking to the length of service rendered by the petitioner as

well as the fact that he is now 38 years of age and without entering into the controversy whether advertently or inadvertently, the petitioner did not appear in the examination conducted by the District & Sessions Judge, Churu on 6.2.2005 and adopting an approach of judicious sensitivity and in order to meet the ends of justice, I deem it just and proper, in the interest of justice to direct the Respondent No.3 in the following manner :-

(i) The order dated 14.2.2005 (Annexure 7), passed by Respondent No.3 - the District & Sessions Judge, Churu is quashed and set aside . It will be deemed as if the order dated 14.2.2005 (Annexure 7) had not been passed by the Respondent No.3.

(ii) The District & Sessions Judge, Churu – Respondent No.3 is directed to conduct the departmental examination within a period of two months from the date of receipt of a certified copy of this order.

(iii) The petitioner is given last opportunity to appear in the aforesaid departmental examination.

(iv) The petitioner is directed to submit a certified copy of this order before Respondent No.3 within a period of fifteen days from today.

(v) If the petitioner succeeds in the aforesaid departmental examination, then he may be regularized in accordance with the

Rules.

(vi) If he does not succeed in the departmental examination, then a reasoned and speaking order, strictly in accordance with the Rules, may be passed.

With the aforesaid directions, the instant petition stands disposed of.

(R.P.VYAS), J.

scd.